No. 01-1120 (14)

In The

Supreme Court of the United States

DAVID MEYER, individually and in his capacity as president and designated officer/broker of Triad, Inc., dba Triad Realtors,

Petitioner,

vs.

EMMA MARY ELLEN HOLLEY; DAVID HOLLEY; MICHAEL HOLLEY, a minor; BROOKS BAUER, individually and on behalf of the general public,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Central District of California (Western Div.)

* * *

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* * *

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* * *

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* * *

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public,	**Case No. 98-7965 CM (Mcx)**
Plaintiffs,	**FIRST AMENDED COMPLAINT FOR MONETARY, DECLARATORY, AND INJUNCTIVE RELIEF; DEMAND FOR JURY TRIAL**
vs.	(Filed Oct. 19, 1998)
DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD INC., doing business as TRIAD REALTORS,	
Defendant.	

I. INTRODUCTION

1. In this action, Emma Mary Ellen Holley, David Holley, Michael Holley, and Brooks Bauer seek monetary, declaratory and injunctive relief against defendant for discriminating against African Americans on the basis of race or color in the sale of housing in violation of the federal Fair Housing Act, the federal Civil Rights Act of 1866, related state anti-discrimination laws, and other state laws. Plaintiff Brooks Bauer also seeks monetary and declaratory relief against defendant for breach of his fiduciary duty owed to Mr. Bauer.

II. JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 42 U.S.C. section 3613 and by 28 U.S.C. section 1331. This Court has supplemental jurisdiction pursuant to 28 U.S.C. section 1367 to hear and determine plaintiffs' state law claims because those claims are related to plaintiffs' federal law claims and arise out of a common nucleus of related facts. Plaintiffs' state law claims are related to plaintiff's federal law claims such that those claims form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper under 28 U.S.C. section 1391 in that the claims alleged herein arose within Twenty-Nine Palms, California.

III. PARTIES

4. Plaintiffs Emma Holley, David Holley, and Michael Holley (hereinafter "the Holleys") reside in Twenty-Nine Palms, California. Emma Holley and David Holley are a married couple. The Holleys are all citizens of the

United States. Mrs. Holley is African American. Mr. Holley is white. Their son by adoption, Michael, is African American.

5. Plaintiff Brooks Bauer (hereinafter "Mr. Bauer") resides in Twenty-Nine Palms, California. He is a general building contractor doing business in Twenty-Nine Palms, California. Mr. Bauer is a citizen of the United States.

6. Defendant David Meyer is the designated officer and broker under which Triad, Inc. (hereinafter "Triad"), a California real estate corporation located at 73421 29 Palms Highway, in Twenty-Nine Palms, California, is owned and operated. Triad is the corporate licensee of a broker's license under license number 00351288. Mr. Meyer is the designated officer and broker for that license. Mr. Meyer is president and designated officer/broker of Triad, which is engaged in the business of selling homes to members of the public. Mr. Meyer resides in Twenty-Nine Palms, California and is a real estate broker responsible for the operation of his brokerage, Triad. With respect to the federal law claims alleged herein, Mr. Meyer is sued in his individual capacity and in his capacity as president and designated officer/broker of Triad Inc., doing business as triad Realtors. With respect to claims six, seven and eight alleged herein, Mr. Meyer is sued only in his capacity as president and designated officer/broker of Triad Inc., doing business as Triad Realtors. With respect to all other claims alleged herein, Mr. Meyer is sued individually and in his capacity as president and designated officer/broker of Triad Inc., doing business as Triad Realtors.

IV. FACTS

A. INTRODUCTION

7. Defendant, acting through his agents, has engaged in a pattern or practice of discrimination against African Americans, including plaintiffs, on account of race or color in the sale of houses. Defendant or his agents have pursued this pattern or practice of racial discrimination for the purpose or with the effect of excluding African Americans from residing in certain houses in the twenty-Nine Palms area. Defendant or his agents continue to engage in such a pattern or practice of discrimination so as to constitute a continuing violation.

8. The pattern or practice of discrimination, committed by defendant or his agents, against African Americans, including plaintiffs, includes, but is not limited to committing the following discriminatory housing practices:

A. Refusing to sell or negotiate to sell homes because of race or color;

B. Failing to process an offer for the sale of a dwelling or to communicate an offer accurately because of race or color;

C. Discouraging any person from inspecting or purchasing a dwelling because of race or color;

D. Failing to accept or consider a bona fide offer because of race or color;

E. Using words or phrases which convey that dwellings are available or not available to particular groups of persons because of race or color;

F. Using different qualification criteria or applications, or sale standards or procedures, because of race or color;

G. Expressing to agents, brokers, employees, prospective sellers or to any other persons a preference for or limitation on any purchaser because of race or color;

H. Indicating through words or conduct that a dwelling which is available for inspection or sale has been sold because of race or color;

I. Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection or sale because of race or color;

J. Providing false or inaccurate information regarding the availability of a dwelling for sale to any person, regardless of whether such person is actually seeking housing, because of race or color; and,

K. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale of a dwelling or in connection with a residential real estate-related transaction because of race or color.

9. Defendant, acting in his capacity as president and designated officer/broker of Triad, has breached his fiduciary duty as plaintiff Brooks Bauer's agent to act in Mr. Bauer's best interests as the listing agent for the sale of Mr. Bauer's house and to use his best efforts to procure a buyer for Mr. Bauer's house. Mr. Meyer has violated his fiduciary duties of care and diligence and his duty to

disclose to the Mr. Bauer all offers to purchase Mr. Bauer's house.

10. Defendant, acting in his capacity as president and designated officer/broker of Triad, has tortiously interfered with an economic relationship with prospective economic advantage causing damage to plaintiffs.

11. In the alternative, defendant, acting in his capacity as president and designated officer/broker of Triad, has negligently interfered with an economic relationship with prospective economic advantage causing damage to plaintiffs.

12. In the alternative, defendant has negligently failed to hire, train, supervise, and discipline his employees and agents regarding their duties under state and federal fair housing laws.

B. THE HOLLEYS' COMPLAINT

13. At all times relevant herein, the Triad real estate firm was owned and operated by Mr. Meyer, who served and continues to serve its president and designated officer/broker. Triad received its license to operate a real estate brokerage company under Mr. Meyer's broker's license and continues to operate under that license. As a corporate licensee, Triad cannot conduct business unless an officer who is licensed by the State of California as a broker serves as an officer and designated officer/broker of Triad. Mr. Meyer is the only officer or employee of Triad who has a broker's license. Triad pays taxes under Mr. Meyer's tax identification number. As the president and broker of Triad, the agents and employees of Triad, including Grove Crank, Terry Stump and Lois Carrol, ultimately

report to Mr. Meyer. Each agent of Triad, including Grove Crank, Terry Stump and Lois Carrol, is employed by Triad under the supervision or direction of Mr. Meyer in his capacity as its broker and president.

14. In October 1996, the Holleys began looking in Twenty-Nine Palms for a home to purchase. On or around October 7 or 8, 1996, they visited the Twenty-Nine Palms office of Triad Realtors. There, they met with Triad salesperson Grove Crank and asked him if he had any listings for new or nearly new houses for sale in the area that fit their needs and price range. They stated that they were interested in purchasing a house in the $100,000 to $150,000 price range.

15. Mr. Crank then took them to see four houses in Twenty-Nine Palms that Triad listed for sale. None of these houses was listed for under $150,000. Although they were told to make an offer on a house listed at $178,000, they determined that this house did not meet their needs. They returned to the office of Triad Realtors after viewing these homes and requested that Mr. Crank inform them if any houses meeting their requirements were added to Triad's listings. No one from Triad ever called the Holleys with such information.

16. In approximately mid to late November of 1996, the Holleys were on their way to visit friends when they spotted a house at 73972 Whitesands with Triad Realtors' "for sale" sign in the front yard. The Holleys had never been informed about this house by Triad, and were interested in getting more information about it. Soon thereafter, Mr. and Mrs. Holley went to the Triad office to find out the asking price of the house and other details. The only salesperson in the office at the time, Ms. Terry

Stump, informed the Holleys that the asking price was $145,000. Ms. Stump made an appointment for Mrs. Holley to view the house on the following Tuesday at 10:00 a.m.

17. On the following Monday, Mrs. Holley called Ms. Stump and asked to reschedule the appointment to view the house. Ms. Stump agreed to show the Holleys the house later that morning, at 10:00 a.m. Mr. and Mrs. Holley were met by Ms. Stump at the house at 10:00 a.m. Mrs. Holley's sister Clara Pullen and her friend Cherie Hughes were also present. Ms. Stump opened the doors to the house and began showing them the interior. At approximately 10:20 a.m., Lois Carroll, another Triad salesperson who lived down the street, entered the house. Ms. Carroll stated, "Oh, it's you; I was driving around and saw the door open and came to investigate to see if someone had broken in," or words to that effect. Ms. Carroll and Ms. Stump talked in the kitchen area, while the Holleys finished touring the house. When the Holleys returned to the kitchen area, Ms. Carroll said to Ms. Stump, "I'll see you in the office," or words to that effect. She then left.

18. As the Holleys left the house with Ms. Stump, Ms. Stump inquired as to whether the Holleys intended to make an offer on the house. Mrs. Holley stated that she and her husband were in the process of selling a house in the city, and wished to pay cash for a new house following the close of escrow on the city home. She further stated that she wanted to offer the builder $5,000 to hold the house until April or May of 1997, when the Holleys expected to close the escrow on the city house. Ms. Stump replied, it "sounds like a fair deal," or words to that effect. Ms. Stump and Mrs. Holley agreed to meet the following

morning to write up the offer to hold and subsequently purchase the Whitesands house.

19. That same evening at approximately 6:00 p.m., Mrs. Holley called Brooks Bauer, the builder of the house on Whitesands. She informed Mr. Bauer that she had toured the house and was interested in purchasing it. She stated that she and her husband were in the process of selling a house in another city and would not be able to close the sale on Mr. Bauer's house until after the sale of the other house was completed. She further stated that they wanted to offer full price, and would offer to place $5,000 in an escrow account to hold the property while they were closing the sale on their other house. She stated that they would pay cash. Mr. Bauer then answered Mrs. Holley's questions regarding the construction of the house, and stated that he looked forward to receiving her offer. He also informed her that her offer sounded "pretty good," but that the offer would have to go through Triad Realtors. Mrs. Holley replied that she was going to Triad the following day to write up the offer.

20. Mr. Bauer telephoned Grove Crank at home that same evening to tell him of Mrs. Holley's intentions. He spoke to Mr. Crank personally, but did not discuss the terms of the offer with him. He indicated to Mr. Crank that he looked forward to receiving the Holleys' offer.

21. At approximately 7:00 p.m. on the same evening, Ms. Stump called the Holley residence. Ms. Stump told Mrs. Holley that she had spoken with a few people in the office, and that "they felt that $5,000 was not enough money to ask him to hold the house for six months," or words to that effect. Ms. Stump stated that they felt that $6,000-$7,000 was necessary to hold the house. She also

stated that Mrs. Holley should be sure to bring the money when she came to the office the following day to write up the offer. Mrs. Holley was surprised, but responded "OK," or words to that effect. Following the conversation, Mr. and Mrs. Holley discussed what had happened and decided not to raise their offer to hold the property above $5,000.

22. At approximately 10:00 a.m. on the following day, Mr. and Mrs. Holley arrived at the Triad office. They informed Ms. Stump that they did not wish to raise their offer. Ms. Stump replied that after talking with the others on Monday afternoon, they decided that $5,000 was "too low and unfair" to present to the builder, or words to that effect. Mrs. Holley asked Ms. Stump with whom she had discussed the matter. Ms. Stump stated, "the older realtors in the office," or words to that effect. Mrs. Holley then asked, "You mean Lois [Carroll] and Grove [Crank]?" Ms. Stump nodded affirmatively.

23. The Holleys informed Ms. Stump that they did not think that the realtors had any right to control the offer the Holleys made to the builder, however unfair the realtors thought the offer was. The Holleys stated that the builder should decide whether to accept or reject their offer. Ms. Stump responded that she felt their offer was unfair. The Holleys asked her to explain why her attitude about the offer had changed over the past 24 hours. She responded, "I'm a new agent in the office and still have to check with the older agents," or words to that effect. The Holleys then stated that she had no right to tell them to bring their money into the office, since they had not yet formalized the offer and presented it to the builder. They said that they would not agree to present an offer based on the new terms.

24. Ms. Stump then asked if they would be interested in seeing any other houses. They replied that they did not think so. Ms. Stump stated that they still had "two lovely homes on the golf course," or words to that effect. The Holleys said, "No, thanks."

25. After leaving the Triad office, Mr. and Mrs. Holley changed their minds and decided to drive by the two homes on the golf course that Ms. Stump had just mentioned. They drove directly to the homes. After walking around the exterior of the homes, they decided that they would like to tour the home located at 4632 Saddlehorn. They drove to the nearest pay phone and called the Triad office. Mrs. Holley spoke with Ms. Stump and informed her that they would like to see the house at 4632 Saddlehorn. Ms. Stump replied that the house had been sold. Mrs. Holley asked if it had been sold within the last hour. Ms. Stump relied that she had not known that the house was sold when she told the Holleys about it approximately one hour earlier. Ms. Stump asked if they wished to see the other one for sale. Mrs. Holley replied that they were really interested in the one at 4632. Ms. Stump replied, "I'll have to check to see if I can still show it and get back to you," or words to that effect.

26. Ms. Stump called the Holley residence at approximately 12:30 the same day and stated that she could still show the home at 4632 Saddlehorn. They agreed to meet at the home at 4:00 p.m. the same day. At approximately 4:00 p.m., the Holleys met Ms. Stump to look at the home. Ms. Stump repeated that it was sold, and asked again if they wished to see the one for sale down the street. The Holleys declined.

27. After viewing the home at 4632 Saddlehorn, the Holleys had no further communications with Triad. They received no information about additional houses for sale. Having found no suitable ready-made house in the area, the Holleys contracted with a builder to build their own home on April 9, 1997. However, the Holleys have issued a stop work order on their new home because the construction does not conform to the specifications in the blueprints.

C. BROOKS BAUER'S COMPLAINT

28. In approximately August of 1995, Mr. Bauer hired Triad by an agreement to act as his agent to sell the real property owned by Mr. Bauer, located at 73972 Whitesands in 29 Palms.

29. Mr. Bauer was never contacted by Grove Crank, David Meyer, or any individual affiliated with Triad regarding the Holleys' offer to purchase his house.

30. Approximately one week after he spoke with Mrs. Holley about her intent to make an offer on his home, Mr. Bauer stopped by Triad's office to inquire about the status of the matter. He met with Grove Crank. Mr. Crank stated, "No, you don't want to fuck with those niggers," or words to that effect. Mr. Bauer was stunned and offended. He replied to the effect that he did not care what color their skin was, since their money was green. Mr. Crank said, "No, that's a salt and pepper team," or words to that effect. He also stated that the Holleys were not interested in Bauer's house, and were either looking at other houses or had found another house. Mr. Bauer did not take any further action at this time because he assumed that the

Holleys had changed their mind about making an offer to purchase his house.

31. One or about April 23, 1997, Mr. Bauer learned that a family matching the Holley's description was building a house in the area. Later on the same day, Mr. Bauer called the Holleys and left a message on their answering machine asking them to return his call. Mrs. Holley called him later that evening. Mr. Bauer informed her that he had lowered the asking price on his Whitesands house, and asked if she and her husband might still be interested in purchasing it. Mrs. Holley replied that they were going to have a house built, the plans for which were in the process of being finalized. She also stated, "Triad cost you the sale of your house. We wanted to buy it," or words to that effect. Mr. Bauer asked her what she meant. She told him that Triad had not informed her that his house was on the market; instead, the Holleys happened to see it when they were driving through the neighborhood one day. She also stated that the Holleys felt discouraged in their attempt to purchase the house. Mr. Bauer apologized for Triad's actions and was disturbed by what Mrs. Holley had said about Triad.

32. On or about April 24, 1997, Mr. Bauer called Mrs. Holley to discuss the matter further. Mr. Bauer told Mrs. Holley that he believed that she may have been the victim of discrimination. On or about May 21, 1997, she contacted the San Bernardino Fair Housing Council to file a complaint against Triad.

33. One or about June 21, 1997, the California Association of Realtors referred Mr. Bauer to the San Bernardino Fair Housing Council in order to report the events that had transpired.

34. In approximately May of 1997, Mr. Bauer's escrow closed on the house located at 73972 White Sands. The house sold for the amount of $125,000, $20,000 less than the amount the Holleys would have paid.

D. INJURIES

35. By reason of defendant's unlawful acts or practices, each plaintiff has suffered loss of an important housing opportunity, violation of their civil rights, injury to their property, and severe emotional distress and physical injury, including humiliation, mental anguish, and attendant bodily injury, such as stomach aches, headaches, and sleep loss, and other special and general damages according to proof. Accordingly, they are entitled to compensatory damages.

36. By reason of defendant's unlawful acts or practices, plaintiff Brooks Bauer has lost the sale of his house. Instead of selling the home in November to the Holleys for $145,000, Mr. Bauer sold the home in April for $125,000. Mr. Bauer also continued to pay the costs associated with carrying property insurance for the months between November and April, and the interest on the loan he took out to purchase the property and build the home. Accordingly, he is entitled to compensatory damages.

37. In doing the acts of which plaintiffs complain, defendant acted with oppression, fraud and malice, and with wanton and conscious or reckless disregard of the rights of plaintiffs. Accordingly, plaintiffs are entitled to punitive damages.

38. There now exists an actual controversy between the parties regarding defendant's duties under the federal

and state fair housing laws. Accordingly, plaintiffs are entitled to declaratory relief.

39. Unless enjoined, defendant or his agents will continue to engage in the unlawful acts and the pattern or practice of discrimination described above. Plaintiffs have no adequate remedy at law. Plaintiffs are now suffering and will continue to suffer irreparable injury from the acts and the pattern or practice of discrimination, committed by defendant or his agents, against African Americans unless relief is provided by this Court. Accordingly, plaintiffs are entitled to injunctive relief.

V. CLAIMS

A. FIRST CLAIM

[Fair Housing Act]

40. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

41. Defendant violated the Fair Housing act when defendant or his agents injured plaintiffs by committing the following discriminatory housing practices:

A. Refusing to sell a dwelling because of race or color, in violation of 42 U.S.C. section 3604(a);

B. Discriminating in the terms, conditions, and privileges of the sale of a dwelling because of race or color, in violation of 42 U.S.C. section 3604(b);

C. Making statements with respect to the sale of a dwelling which indicated a preference, limitation, or discrimination based on race or color, in violation of 42 U.S.C. section 3604(c);

D. Representing to persons because of their race or color that a dwelling is not available for inspection or sale when such dwelling is in fact available, in violation of 42 U.S.C. section 3604(d);

E. Discriminating in residential real estate-related transactions because of race or color, in violation of 42 U.S.C. section 3605(a); and,

F. Coercing or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of rights guaranteed by the Fair Housing Act, in violation of 42 U.S.C. section 3617.

B. SECOND CLAIM

[Civil Rights Act of 1866]

42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

43. Defendant violated the Civil Rights Act of 1866, 42 U.S.C. section 1982, when defendant or his agents injured plaintiffs by discriminating against plaintiffs in the sale of housing because of race or color.

C. THIRD CLAIM

[California Fair Employment and Housing Act]

44. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

45. Defendant violated the California Fair Employment and Housing Act when defendant or his agents

injured plaintiffs by committing the following discriminatory housing practices:

A. Discriminating in the sale of housing because of race or color, in violation of California Government Code section 12955(a) and (d);

B. Making, printing, or publishing or causing to be made, printed or published any notice, statement or advertisement that indicates any preference, limitation, or discrimination based on race or color, in violation of California Government Code section 12955(c);

C. Discriminating in real estate-related transactions because of race or color, in violation of California Government Code section 12955(i); and,

D. Otherwise making unavailable or denying a dwelling based on discrimination because of race or color, in violation of California Government Code section 12955(k).

D. FOURTH CLAIM

[California Unruh Civil Rights Act]

46. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

47. Defendant violated the Unruh Civil Rights Act, California Civil Code section 51 *et seq.*, when defendant or his agents injured plaintiffs by discriminating against plaintiffs in the operation of Triad Inc. or Triad Realtors, a business establishment, because of race or color.

48. Pursuant to the Unruh Civil Rights Act, plaintiffs are entitled to statutory damages, among other

remedies, of up to three times their actual damages as determined by the trier of fact, but no less than $1000.00 for each violation.

E. FIFTH CLAIM

[Unfair Business Practices]

49. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

50. In acting as herein alleged, defendant or his agents have engaged in a pattern or practice of unlawful discrimination in the operation of Triad, Inc., a business establishment, and therefore have engaged in acts of unfair competition as the same is defined in section 17200 of the Business & Professions Code.

51. In bringing this action for relief, plaintiffs are acting in the interest of themselves and the general public pursuant to the California Business and Professions Code section 17204.

F. SIXTH CLAIM

[Breach of Fiduciary Duty to Plaintiff Brooks Bauer]

52. Plaintiff Brooks Bauer realleges and incorporates by reference paragraphs 1 through 39 of the complaint herein.

53. As plaintiff Brooks Bauer's agent, defendant owed Mr. Bauer a fiduciary duty to:

A. Use due care and diligence to sell the real property owned by the principal, Brooks Bauer;

B. Disclose all offers of purchase to the principal, Brooks Bauer;

C. Ensure that all his agents were properly supervised and trained regarding their duties under state and federal fair housing laws and state real estate laws.

54. In acting as herein alleged, defendant breached these fiduciary duties as plaintiff Brooks Bauer's agent.

55. As a result of defendant's beach of these fiduciary duties, plaintiff Brooks Bauer has been damaged in that Mr. Bauer could have sold the property for a higher price but for defendant's actions or omissions.

G. SEVENTH CLAIM

[Tortious Interference with Economic Relationship]

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

57. An economic relationship existed between Brooks Bauer and the Holleys that contained probable future economic benefits for Mr. Bauer and the Holleys.

58. Defendant or his agents knew of the prospective economic relationship between Mr. Bauer and the Holleys.

59. Defendant or his agents intentionally engaged in wrongful acts or conduct designed to interfere with the prospective economic relationship between Mr. Bauer and the Holleys.

60. As a result of defendant's or his agents' conduct, the economic relationship between Mr. Bauer and the Holleys was disrupted.

H. EIGHTH CLAIM

[Negligent Interference with Economic Relationship]

61. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

62. An economic relationship existed between Brooks Bauer and the Holleys that contained probable future economic benefits for Mr. Bauer and the Holleys.

63. Defendant or his agent knew or should have known of the prospective economic relationship between Mr. Bauer and the Holleys, and were aware, or should have been aware that if they did not act with due care their actions would interfere with that relationship and cause plaintiffs to lose the probable future economic benefit of the relationship.

64. Defendant or his agents were negligent and failed to exercise due care.

65. The negligence of defendant's or his agents' disrupted the potential economic relationship between Mr. Bauer and the Holleys.

66. As a legal result of defendant's or his agents' conduct, plaintiffs have suffered economic losses, humiliation, mental anguish, severe emotional distress and severe personal injury, including bodily injury such as headaches, stomach aches and loss of sleep, and other special and general damages according to proof.

I. NINTH CLAIM

[Statutory Negligence]

67. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

68. Defendant engaged in acts in violation of California Business & Professions Code sections 10177(h) and 10159.2. Defendant's violation of such statutes proximately caused injury to plaintiffs so as to constitute statutory negligence.

69. Defendant's violation of section 10177(h) and 10159.2 of the California Business & Professions Code, which were designed to protect members of the public, has proximately caused injury to plaintiffs as to constitute statutory negligence.

70. As a legal result of defendant's statutory negligence, plaintiffs have suffered humiliation, mental anguish, severe emotional distress and severe personal injury, including bodily injury such as headaches, stomach aches and loss of sleep, and other special and general damages according to proof.

J. TENTH CLAIM

[General Negligence]

71. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of the complaint herein.

72. Defendant owed plaintiffs a duty to operate Triad in a manner that is free from unlawful discrimination, and to hire, train, supervise and discipline employees and agents to fulfill that duty. Defendant negligently violated that duty by discriminating against African

Americans on account of their race or color. Defendant's violation of that duty was the result of negligence, including but not limited to:

A. Defendant's negligent failure to train employees and agents regarding the requirements of state and federal fair housing laws;

B. Defendant's negligent failure to hire persons who were familiar with the requirements of state and federal fair housing laws; and,

C. Defendant's negligent failure to supervise employees and agents regarding compliance with the requirements of state and federal fair housing laws.

73. As a legal result of defendant's negligent conduct, plaintiffs have suffered loss of an important housing opportunity, violation of their civil rights, injury to their property, and bodily injury, including severe humiliation, physical and emotional distress.

VI. RELIEF

Wherefore, plaintiffs pray for entry of a judgment against defendant that:

1. Awards compensatory and punitive damages according to proof;

2. Declares that defendant has violated the provisions of the applicable federal and state fair housing laws;

3. Declares that defendant has committed the torts alleged herein;

4. Enjoins all unlawful practices complained about herein and imposes affirmative injunctive relief requiring

defendant, his partners, agents, employees, assignees, and all persons acting in concert or participating with him, to take affirmative action to provide equal housing opportunities to all home buyers and prospective home buyers regardless of race or color;

5. Awards up to three times the amount of actual damages for plaintiffs against defendant pursuant to the Unruh Civil Rights Act;

6. Awards costs of this action, including reasonable attorneys' fees; and,

7. Awards all such other relief as the Court deems just.

Dated: October 16, 1998.

BRANCART & BRANCART

/s/ Liza Cristol-Deman
Liza Cristol-Deman
Attorneys for Plaintiffs

VII. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby requests a jury trial.

Dated: October 16, 1998.

BRANCART & BRANCART

/s/ Liza Cristol-Deman
Liza Cristol-Deman
Attorneys for Plaintiffs

[Proof Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public Plaintiffs, v. DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD INC., doing business as TRIAD REALTORS Defendant.	CV-98-7965-WMB ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS (Filed Mar. 17, 1999)

I. BACKGROUND

Emma Mary Ellen Holley, David Holley, Michael Holley ("Holleys") and Brooks Bauer ("Bauer") (collectively "plaintiffs") filed a complaint on November 14, 1997, alleging that Grove Crank Sr. ("Crank") and Triad Realtors ("Triad") (collectively "defendants") violated federal and state fair housing laws by discriminating against plaintiffs on the basis of their race during an attempt by the Holleys to purchase a house. Plaintiffs also sued David Meyer ("Meyer") in a separate action that nevertheless covered the same allegations and added several new claims. This Court has consolidated the two cases.

Plaintiffs allege that in October 1996, the Holleys visited the Twenty-Nine Palms office of Triad Realtors. There, they met with Triad agent Crank and inquired about listings for new houses in the $100,000 to $150,000 range. Crank took the Holleys to see 4 houses in the area, all of which were above $150,000. In mid-November 1996, the Holleys located a home on their own that happened to be listed with Triad. When the Holleys asked about that house, Ms. Terry Stump ("Stump") a Triad agent, informed them that the asking price for the house was $145,000.

The Holleys wished to make an offer to purchase the house at the listed price, but they wanted to wait until they closed escrow on their existing home. The Holleys indicated to Stump that they would put $5000 in escrow for the builder to hold the house until April or May 1997. Stump told the Holleys that their offer seemed fair. Mrs. Holley also called Bauer, the builder of the house, to tell him that they would offer to pay the listed price for the house, and pay $5000 to hold the house until their escrow closed. Bauer indicated that he thought it seemed fair, but told the Holleys that the offer must go through Triad.

Later, Stump called Mrs. Holley to tell her that other people in the Triad office felt that $5000 was not enough money to get the builder to hold the house for six months. The Holleys decided not to raise their offer, and Stump said that the offer would not be presented to the builder. Stump indicated that Crank and Lois Carroll were the agents in the office who determined that the offer was too low, and that as a newer agent, she had to follow their instructions. The Holleys told Stump that the builder should be able to decide if the offer was fair.

One week later, Bauer stopped by the Triad office to find out the status of the Holleys' offer. Crank then allegedly used racial invectives in referring to the Holleys and called them a "salt and pepper team." Bauer and the Holleys filed a complaint against Triad with the San Bernardino Fair Housing Council.

In November 1997, Plaintiffs also filed six claims against defendants in this Court: (1) violation of the Fair Housing Act ("FHA"), 42 U.S.C. § 3604; (2) violation of 42 U.S.C. § 1982; (3) violation of the California Fair Employment and Housing Act, Cal. Gov. Code § 12955; (4) violation of the Unruh Civil Rights Act, Cal. Civ. Code § 51; (5) unfair business practices in violation of Cal. Bus. & Prof. Code § 17200; and (6) negligence. In October 1998, the plaintiffs asserted four additional claims against Meyer: (1) breach of fiduciary duty to plaintiff Bauer; (2) tortious interference with economic relationship; (3) negligent interference with economic relationship; and (4) violation of the California statutory negligence provisions, Cal. Bus. & Prof. Code §§ 10177(h) & 10159.2.

Intervenor Legion Insurance Company, ("Legion") provided insurance coverage for defendants in the period covered by the allegations of this case. Legion filed a declaratory relief action in which the Holleys and Bauer intervened. The Court granted Legion's summary judgment motion and declared that the alleged acts by defendants were not covered by the insurance and Legion's liability was limited to a $10,000 duty to defend. Defendant Meyer then filed this motion to dismiss.

II. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim must be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Usher v. Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1887) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). On a motion to dismiss, the court must presume all factual allegations of the pleading to be true and draw all reasonable inferences in favor of the nonmoving party. *Id.*

III. DISCUSSION

Meyer moves to dismiss on two individual grounds. First, he claims that as a designated broker who had no part in the discriminatory acts, he cannot be found personally liable. Second, because the complaint was filed in October 1998, Meyer alleges that the statute of limitations bars many of the claims against him.

A. MEYER'S PERSONAL LIABILITY

1. State Claims

Plaintiffs' state that they have not sued Meyer in his individual capacity for violation of state law, although their complaint does not exactly bear this out.[1] Plaintiffs

[1] In their complaint, plaintiffs state that they are suing Meyer in his individual capacity for all claims except for three. Pls' complaint ¶ 6. However, all but two claims are premised on state law violations. In the hearing on February 2, 1999, this Court inquired of plaintiffs' counsel whether Meyer was being sued in his individual capacity for violations of California law. Plaintiffs' counsel at that point reiterated the fact that Meyer was not being sued individually for any California law

(Continued on following page)

admit that under California law Meyer "cannot be held individually liable unless he participated in the subject transaction." Pls' opp. at 6. Because plaintiffs do not allege that Meyer had anything to do with the actions described in the complaint, Meyer, as a broker, is not individually liable for any state law violations.

California law is very clear that "[a]ny action by the qualifying broker [of a real estate brokerage firm] must be regarded as an action by the corporation and not by the broker as an individual." *Walters v. Marler*, 83 Cal.App.3d 1, 35 (1978). Furthermore, a qualifying broker "may not be held personally liable" for an action of an employee. *See id.*

Plaintiffs call into question the ruling in *Walters* because a year after that court issued its opinion, the California Legislature passed a statute that requires a designated broker to "supervise and control the activities of the sales persons employed by the corporation." Cal. Bus. & Prof. Code § 10159.2. This statute is part of the statutory regulation of real estate brokers that contains sections on licensing requirements and penalties for violations of the regulatory scheme. *See* Cal. Bus. & Prof. Code §§ 10130, 10175-10185. In light of the detailed disciplinary sanctions imposed by §§ 10175-10185, a federal district court ruled that § 10159.2 does not create a private right of action against a designated broker. *See In re Grabau*, 151 B.R. 227, 232 (N.D.Cal. 1993). The court noted that "[t]he most obvious interpretation of § 10159.2 is that it simply extended [the] disciplinary scheme to

violation. Therefore, this court considers the eight claims premised on California law violations to be directed at Meyer in his role as officer of Triad only.

apply against designated brokers who failed to properly supervise employees." *Id.*

As far as the allegations against Meyer in his role as officer of Triad are concerned, these claims should be properly asserted against Triad. Triad is not party to this specific case. Furthermore, any liability against Meyer as an officer of Triad would only attach to Triad in that plaintiffs have not urged theories that could justify reaching Meyer individually. Therefore, all state claims against Meyer as an officer of Triad are dismissed.[2]

2. Federal Claims

Though plaintiffs do not contend that Meyer is individually liable for his alleged state law violations, they do seek to find him liable individually both as an officer and designated broker of Triad for the alleged violations of federal law.

The doctrine of respondeat superior applies to actions brought under 42 U.S.C. § 1982 and FHA. *See City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1096 (7th Cir. 1992). Principals have been held liable for the discriminatory actions of their agents in the context of FHA. *See United States v. Ralistrieri*, 981 F.2d 916, 930 (7th Cir. 1992). In most cases where liability is imposed on the principal for the discriminatory acts of an agent, the principal does not need to authorize or know of the discriminatory activity for liability to attach. *See id.*,

[2] Plaintiffs' claims for violation of the Unruh act and for negligence would also be dismissed for being outside the statute of limitations of one year.

981 F.2d at 916. However, the overwhelming majority of these cases takes place in a situation where the principal personally owns the involved real property, as distinguished from the situation where the principal owns a corporation that in turn owns the real property. *See e.g. Walker v. Crigler*, 976 F.2d 900 (4th Cir. 1992); *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975).

As to Meyer's liability for federal violations in his capacity as officer of Triad, these claims should be asserted against Triad which is not party to this specific case. Furthermore, any liability against Meyer as an officer of Triad would only attach to Triad in that plaintiffs have not urged theories that could justify reaching Meyer individually.

Plaintiffs also allege that Meyer is individually liable as a designated broker. Pls' complaint ¶ 6. Although no specific act of discrimination by Meyer is alleged, this factual allegation is not necessary for his individual liability as a designated broker under the federal claims. A licensed broker under whose license employees operate may be liable for the discriminatory actions of those employees. *See Marr v. Rife*, 503 F.2d 735, 741 (6th Cir. 1974); *Heights Community Congress v. Hilltop Realty, Inc.*, 629 F.Supp. 1232, 1303 (N.D. Ohio 1983), *rev'd in part on other grounds*, 774 F.2d 135 (6th Cir. 1985). In *Hilltop* the court deemed that the licensed broker, in that case a corporation, was "liable for the imputed acts and statements" of those agents operating under the license who participated in violations of the federal housing laws. *See id.* The plaintiffs also sought to attach liability to the owner/president of the corporation. *See id.* The court held that since the agents that committed the discriminatory acts had a "contractual relationship with [the corporation]

as broker and not with [the owner/president] as broker, [the agents'] acts and statements [could] not be imputed to [the owner/president.]" *See id.*[3]

Similarly, in *United States v. Lorantffy Care Center*, 999 F.Supp. 1037, 1045 (N.D. Ohio 1998), the U.S. government was seeking to find employees personally liable for the pattern and practice of discrimination allegedly perpetrated by a care center for the elderly. The court noted that there is a right to challenge the "illegal activities of a group of persons even if the individual members" were not engaged in any illegal activity. *See id.* "However, that right is limited. In particular, no individual may be held vicariously liable simply because she is an officer or manager of the company." *Id.* Thus, where the designated broker is a company, the liability attaches to the company and not to the officers of the company who did not engage in discriminatory conduct. *Id.* Therefore, here if plaintiffs establish that a discriminatory act took place by an agent who operated under a broker's license held by Meyer as an individual and not as an officer, they could recover against Meyer individually.

In sum, the Court dismisses Meyer as an officer for ail federal and state claims. The Court also dismisses Meyer

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[3] The court also explained why the owner could not be liable through the piercing of the corporate veil doctrine. "[V]icarious liability may not be imposed on [the owner] because of his other roles at [the corporation] . . . [s]ince he is not the sole owner of the company, his partial stock ownership would not permit a per se piercing of the corporate veil." *Hilltop Realty*, 629 F.Supp. at 1304. The court noted that the owner's status "as president and chief operating officer in and of itself does not render him personally liable for acts of the corporation or its agents or employees" absent a personal participation in the prohibited conduct. *See id.*

as an individual from all claims except Claims One and Two which are premised on his being a designated broker.

With respect to Meyer's liability as an individual for violations of federal law the Court needs to address defendant's statute of limitations claim.

B. STATUTE OF LIMITATIONS ANALYSIS

The alleged episodes of discrimination occurred in November 1996. Plaintiffs state that they discovered the alleged discrimination in April 1997. Plaintiffs initiated the action against Meyer in October 1998. Thus a statute of limitations of one year on any particular claim would preclude plaintiffs from asserting that claim against Meyer. Likewise, any claim with a limitations period of two or more years would mean that plaintiffs were within the time period allowed for the bringing of the action against Meyer.

As to the federal claims, defendant only raises the time-barred defense with respect to 42 U.S.C. § 1982 contending that a one year limitation applies. The limitations period begins to run from the "date of the last act." *See Havens Realty Corporation v. Coleman*, 455 U.S. 363, 380-81 (1982). Accordingly the limitations period began to run in November 1996 (the latest date of the alleged discrimination).

Plaintiffs attempt to skirt the whole limitations period issue by saying that because Meyer's violation continued until August 1998, the date he ceased being Triad's designated broker, plaintiffs are within a one year limit should this be the applicable period. This argument fails. Plaintiffs point to a line of cases which state that the

limitations period only accrues from the date of the last act in cases involving a "pattern" of discrimination. *See Coleman*, 455 U.S. at 380-81.

Plaintiffs attempt to analogize *Coleman* with the facts of this case. However, in *Coleman* there were specific allegations of different instances of discriminatory episodes. *See Coleman*, 455 U.S. at 366. Here, there are no such allegations leveled at Meyer. Plaintiffs' statement that "Meyer continues to engage in grossly negligent conduct by abdicating all responsibility for Triad Realtors" does not rise to the level of a pattern of discrimination. Plaintiffs point to no other allegations of discriminatory conduct by Meyer's subordinates and a mere omission to supervise one employee at one time is not akin to specific episodes of active discrimination. Thus the statute of limitations accrued in November 1996 for the federal claims.

Defendant states that the limitations period for violation of 42 U.S.C. § 1982 is one year. Defendant reaches this conclusion by analogizing a § 1982 claim to a § 1983 claim. The Supreme Court has ruled that § 1983 claims are governed by the most applicable state statute of limitations period. *See Wilson v. Garcia*, 471 U.S. 261 (1985). Defendant contends that the closest applicable state limitations statute is the California personal injury statute (California Code of Civil Procedure § 340) of one year and therefore this should apply. Plaintiffs' only argument with respect to this claim rests with the "continuing violation" period outlined and rejected above.

One court has held that a one year statute of limitations applies to actions filed under 42 U.S.C. § 1982. *See Mitchell v. Sung*, 816 F.Supp. 597 (N.D.Cal. 1993). In that

case, the court determined that § 1982 is akin to §§ 1981 and 1983 because all of this statutory section was part of the same package of rights. *See Mitchell*, 816 F.Supp at 601. Thus, because the Supreme Court had already indicated that §§ 1981 and 1983 were to be governed by state limitations periods for personal injury suits and that relevant period in California is one year, § 1982 claims also carry the same limitations period. *Id.* This Court agrees.

Because the limitations period against Meyer has already expired the Court GRANTS defendant's motion to dismiss Meyer as an individual with respect to the § 1982 claim.

IV. CONCLUSION

For the foregoing reasons the Court: (1) GRANTS defendant's motion to dismiss Claims Two through Ten in their entirety; (2) GRANTS defendant's motion to dismiss Meyer as an officer of Triad in Claim One; and (3) DENIES defendant's motion to dismiss Meyer as a designated broker in Claim One.

Date: March 15, 1999

/s/ Wm. Matthew Byrne, Jr.
Wm. Matthew Byrne Jr.
United States District Judge

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public,	) Case No. 98-7965 CM (Mcx))) DECLARATION OF JAMES W. PEEL IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Plaintiffs,	)
v.	)
DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD INC., doing business as TRIAD REALTORS,	)
Defendant.	)

I, James W. Peel, declare:

1. That I am an attorney at law, duly licensed to practice before all the courts in the State of California, and

am a member of the law firm of Brown & Peel, attorneys of record herein for defendant David Meyer.

2. That attached hereto and incorporated herein as Exhibit "A" is a true and correct copy of relevant portions from the deposition of defendant David Meyer taken on February 10, 1999. The excerpts accurately reflect the questions asked of, and the answers given, by Mr. Meyer.

3. That attached hereto and incorporated herein as Exhibit "B" is a true and correct copy of portions of Triad Inc's file subpoenaed by plaintiffs' counsel from the Department of Real Estate. Pursuant to *Federal Rule of Evidence*, Rule 201, and *Mack v. South Bay Beer Distributors Inc.* (1986) 798 F.2d 1279, 1282, I respectfully request that the court take judicial notice of the State record.

4. That attached hereto and incorporated herein as Exhibit "C" is a true and correct copy of Triad Inc's license certificate, identification number 00490616 with an issuance date of August 16, 1994 and an expiration date of August 15, 1998. Pursuant to *Federal Rule of Evidence* Rule 201, and *Mack v. South Bay Beer Distributors Inc.* (1986) 798 F.2d 1279, 1282, I respectfully request that the court take judicial notice of the State record.

5. That attached hereto and incorporated herein as Exhibit "D" are true and correct copies of portions of Grove Crank's records subpoenaed from the Department of Real Estate by plaintiffs' counsel. Pursuant to *Federal Rule of Evidence* Rule 201, and *Mack v. South Bay Beer Distributors Inc.* (1986) 798 F.2d 1279, 1282, I respectfully request that the court take judicial notice of the State record.

6. That attached hereto and incorporated herein as Exhibit "E" is a true and correct copy of Grove Crank's

License Certificate. Pursuant to *Federal Rule of Evidence* Rule 201, and *Mack v. South Bay Beer Distributors Inc.* (1986) 798 F.2d 1279, 1282, I respectfully request that the court take judicial notice of the State record.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge, with the exception of those matters based upon information and belief, and as to matters I am informed and believe they are true and correct.

Executed this 31st day of March, 1999, at Fresno, County of Fresno, California.

By: /s/ James W. Peel
JAMES W. PEEL
Attorney for Defendant
DAVID MEYER

[Exhibits A, B, C, D, and E are reproduced in Joint Appendix Lodging pages JA L1 to JA L12.]

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public,	) Case No. 98-7965 CM (Mcx)))) DECLARATION OF) GROVE S. CRANK IN) SUPPORT OF MOTION) FOR SUMMARY) JUDGMENT
Plaintiffs,	)
v.	)
DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD INC., doing business as TRIAD REALTORS,	)
Defendant.	)

I, Grove S. Crank, declare:

1. That I am a resident of Twenty-Nine Palms, California, and a licensed real estate agent since approximately 1980.

2. That attached hereto and incorporated herein as Exhibit "D" to the decision of James W. Peel is a true and correct copy of my real estate agent's renewal application, identification number 00796957, with the effective dates from April 8, 1994 through April 7, 1998.

3. That attached as Exhibit "E" to the declaration of James W. Peel is a true and correct copy of my license certificate from the Department of Real Estate, identification number 00796957, with the effective dates from April 8, 1994 through April 7, 1998.

4. From April 8, 1994, through April 7, 1998, Triad Inc., has exclusively been my employing broker. I am an officer of Triad Inc., and have been such since September of 1996. During that time period, none of the agents in my office have operated under a personal broker's license held by David Meyer. I am informed and believe that Mr. Meyer has not held a personal broker's license for the past ten years, and that each of the agents in my office were acting under the Triad Inc. corporate license identified as Exhibit "C" to the declaration of James W. Peel during the time period of August 16, 1994 through August 15, 1998.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge, with the exception of those matters based upon information and believe, and as to matters I am informed and believe they are true and correct.

Executed this 31 day of March, 1999, at Fresno, County of Fresno, California.

By: /s/ Grove S. Crank
GROVE S. CRANK

[Proof of Service Omitted In Printing]

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY et al.,	) **Case No. CV 97-8368 WMB (SHx)**
Plaintiffs,	) **Consolidated with**
vs.	)
GROVE S. CRANK, SR., TRIAD INC., each individually and doing business as TRIAD REALTORS,	)
Defendants.	)

EMMA MARY ELLEN HOLLEY et al.,	) **Case No. 98-7965 WMB (SHx)**
Plaintiffs,	) **DECLARATION OF ELIZABETH BRANCART IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; EXHIBITS**
vs.	)
DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD INC., doing business as TRIAD REALTORS,	) **Hearing:**) **Date: TBA**) **Time: TBA**) **Room: WMB**
Defendant.	)

I, Elizabeth N. Brancart, do hereby declare:

1. I am an attorney licensed to practice in California and admitted to practice in this district and one of the attorneys for the plaintiffs in this action. I have personal knowledge of the matters set forth herein, and if called to testify, could and would testify to them. This declaration is submitted in support of plaintiffs' statement of genuine issues of material fact in opposition to defendant's motion for summary judgment.

2. Exhibit 1 is a true and correct copy of the entire file for defendant Triad, Inc., produced by the Custodian of Records, Licensing Department, Department of Real Estate, to plaintiffs pursuant to a subpena, served upon the Department of Real Estate on October 27, 1998. Exhibit 1 is comprised of a copy of the subpena and document numbers 15343 through 15387 produced pursuant to that subpena.

3. Exhibit 2 is a true and correct copy of the entire file for defendant Grove Steven Crank, produced by the Custodian of Records, Licensing Department, Department of Real Estate, to plaintiffs pursuant to a subpena, served upon the Department of Real Estate on October 27, 1998. Exhibit 2 is comprised of a copy of the subpena and document numbers 15388 through 15404 produced pursuant to that subpoena.

4. Exhibit 2 is a true and correct copy of the entire file for defendant David Eugene Meyer, produced by the Custodian of Records, Licensing Department, Department of Real Estate, to plaintiffs pursuant to a subpena, served upon the Department of Real Estate on October 27, 1998. Exhibit 3 is comprised of a copy of the subpena and document numbers 15405 through 15443 produced pursuant to that subpena.

5. Exhibit 4 is a true and correct copy of the declaration of custodian of business records for the Department of Real Estate that was produced with the files identified herein under Exhibit numbers 1 through 3.

6. Exhibit 5 is a true and correct copy of excerpts of the deposition of defendant David Meyer, conducted by plaintiffs on February 10, 1999. A certified copy of the entire transcript of the deposition of Mr. Meyer is being lodged concurrently herewith in accordance with Central District Local Rule 8.1.2.

7. Exhibit 6 is a true and correct copy of the Declaration of David Meyer in Support of Opposition to Plaintiffs' Motion to Amend, filed May 18, 1998.

8. Exhibit 7 is a true and correct copy of document bates stamped 2000, the minutes of the board of directors of Triad dated April 18, 1995, as provided to plaintiffs by

defendants in this case. Document 2000 is the only document provided to plaintiffs by defendants that reflects any change in the corporate structure of Triad in 1995. Document 2000 makes no mention of any transfer of ownership between Mr. Meyer and Mr. Crank.

I swear that the foregoing is true and correct under penalty of perjury.

Executed on April 16, 1999, at Pescadero, California.

/s/ Elizabeth Brancart
Elizabeth Brancart

[Exhibits 1, 2, 3, 4, 5, 6, and 7 are reproduced in Joint Appendix Lodging at pages JA L13 to JA L154.]

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public,	**Case No. CV 97-8368 WMB (SHx) Consolidated with**
Plaintiffs,	
vs.	
GROVE S. CRANK, SR. and TRIAD INC., each individually and doing business as TRIAD REALTORS,	
Defendants.	

EMMA MARY ELLEN HOLLEY, DAVID HOLLEY, MICHAEL HOLLEY, a minor, and BROOKS BAUER, individually and on behalf of the general public,	**Case No. CV 98-7965 WMB (SHx)**
Plaintiffs,	**NOTICE OF LODGING CERTIFIED COPY OF DEPOSITION OF DEFENDANT DAVID E. MEYER IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
vs.	
DAVID MEYER, individually in his capacity as President and designated officer/broker of TRIAD INC., doing business as TRIAD REALTORS,	**Hearing: Date: TBA Time: TBA Room: WMB**
Defendant.	**(Filed April 19, 1999)**

Please take notice that plaintiffs have lodged the certified copy of the transcript of the deposition of defendant David Eugene Meyer in this action with the Clerk of the District Court in opposition to defendant's motion for summary judgment

Dated: April 16, 1999.

Respectfully submitted,

BRANCART & BRANCART

/s/ Elizabeth Brancart
Elizabeth Brancart
Attorneys for Plaintiffs

[Proof Of Service Omitted In Printing]

[Excerpts of Deposition are reproduced in Joint Appendix Lodging at pages JA L155 to JA L160.]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, et. al., Plaintiffs, v. DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD INC., dba TRIAD REALTORS, Defendant.	CV 98-7965-WMB ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Filed July 26, 1999)

I. BACKGROUND

Emma Mary Ellen Holley, David Holley, Michael Holley ("Holleys") and Brooks Bauer ("Bauer") (collectively "plaintiffs") filed a complaint on November 14, 1997, alleging that Grove Crank Sr. ("Crank") and Triad, Inc, (a California real estate corporation) violated federal and state fair housing laws by discriminating against plaintiffs on the basis of their race during an attempt by the Holleys to purchase a house. Plaintiffs also sued David Meyer ("Meyer") in a separate action that covered the same allegations and added several new claims. The two cases have been consolidated.

Plaintiffs allege that in October 1996, the Holleys visited the Twenty-Nine Palms office of Triad, Inc. There, they met with Triad, Inc. agent Crank and inquired about listings for new houses in the $100,000 to $150,000 range. Crank took the Holleys to see four houses in the area, all

of which were above $150,000. In mid-November 1996, the Holleys located a home on their own that happened to be listed with Triad, Inc. When the Holleys asked about that house, Ms. Terry Stump ("Stump") a Triad, Inc. agent, informed them that the asking price for the house was $145,000.

The Holleys wished to make an offer to purchase that house at the listed price, but they wanted to wait until they closed escrow on their existing home. The Holleys indicated to Stump that they would put $5000 in escrow for the seller to hold the house until April or May 1997. Stump told the Holleys that their offer seemed fair. Mrs. Holley called Bauer, the seller of the house, to tell him that they would offer to pay the listed price for the house, and pay $5000 to hold the house until their escrow closed. Bauer indicated that he thought it seemed fair, but told the Holleys that the offer must go through Triad, Inc.

Later, Stump called Mr. Holley to tell her [sic] that other people in the Triad, Inc. office felt that $5000 was not enough money to get the seller to hold the house for six months. The Holleys decided not to raise their offer, and Stump said that the offer would not be presented to Bauer. Stump indicated that Crank and Lois Carroll were the agents in the office who determined that the offer was too low, and that as a newer agent, she had to follow their instructions. The Holleys told Stump that Bauer should be able to decide if the offer was fair.

One week later, Bauer stopped by the Triad, Inc. office to find out the status of the Holleys' offer. Crank then allegedly used racial statements in referring to the Holleys and called them a "salt and pepper team." Mrs. Holley is African American while her husband is white. Bauer and

the Holleys filed a complaint against Triad, Inc. with the San Bernardino Fair Housing Council.

In November 1997, Plaintiffs filed this action alleging six claims against defendants: (1) violation of the Fair Housing Act ("FHA"), 42 U.S.C. § 3604; (2) violation of 42 U.S.C. § 1982; (3) violation of the California Fair Employment and Housing Act, Cal. Gov. Code § 12955; (4) violation of the Unruh Civil Rights Act, Cal. Civ. Code § 51; (5) unfair business practices in violation of Cal. Bus. & Prof. Code § 17200; and (6) negligence. In October 1998, the plaintiffs then filed the case against Meyer alleging the earlier claims and adding four additional claims: (1) breach of fiduciary duty to plaintiff Bauer; (2) tortious interference with economic relationship; (3) negligent interference with economic relationship; and (4) violation of the California statutory negligence provisions, Cal. Bus. & Prof. Code §§ 10177(h) & 10159.2.

Intervenor Legion Insurance Company, ("Legion") provided insurance coverage for Triad, Inc. in the period covered by the allegations of this case. Legion filed a declaratory relief action in which the Holleys and Bauer intervened. The Court granted Legion's summary judgment motion and declared that the acts by plaintiffs were not covered by the insurance and Legion's liability was limited to a $10,000 duty to defend.

Defendant Meyer then filed a motion to dismiss. On March 17, 1999, this Court granted Meyer's motion for all eight state claims and for plaintiffs' federal claim based on the violation of 42 U.S.C. § 1982. This Court denied Meyer's motion with respect to the federal claim based on the violation of FHA on the grounds that "if plaintiffs establish that a discriminatory act took place by an agent

who operated under a broker's license held by Meyer as an individual and not as an officer, they could recover against Meyer individually." *See* Order Granting in Part and Denying in Part, Def's Motion to Dismiss, at 9. Meyer now moves for summary judgment on the one remaining federal claim.

II. STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a court shall grant a motion for summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

The moving party for summary judgment bears the initial burden of demonstrating the absence of a genuine issue of fact for trial. *See Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). When the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact would find other than for the moving party. On an issue for which the nonmoving party will have the burden of proof at trial, the moving party need only point out "that there is an absence of evidence to support the nonmoving party's case." *Id.*

Once the moving party satisfies its initial burden, the nonmoving party must go beyond the pleadings and, by its

own affidavits or discovery, "set forth specific facts showing that there is a genuine issue for trial." Fed R. Civ. Proc. 56(e). If the nonmoving party fails to make this showing, "the moving party is entitled to judgment as a matter of law." *Celotex Corp.*, 477 U.S. at 323.

III. DISCUSSION

A licensed broker under whose license employees operate may be liable for the discriminatory actions of those employees. *See Marr v. Rife*, 503 F.2d 735, 741 (6th Cir. 1974); *Heights Community Congress v. Hilltop Realty, Inc.*, 629 F.Supp. 1232, 1303 (N.D. Ohio 1983), *rev'd in part on other grounds*, 774 F.2d 135 (6th Cir. 1985). In *Hilltop* the court deemed that the licensed broker, in that case a corporation, was "liable for the imputed acts and statements" of those agents operating under the corporation's license who participated in violations of the federal housing laws. *See id.* The plaintiffs also sought to attach liability to the owner/president of the corporation. *See id.* The court held that since the agents that committed the discriminatory acts had a "contractual relationship with [the corporation] as broker and not with [the owner/president] as broker, [the agents'] acts and statements [could] not be imputed to [the owner/president.]" *See id.*[1]

[1] The court also explained why the owner could not be liable through the piercing of the corporate veil doctrine. "[V]icarious liability may not be imposed on [the owner] because of his other roles at [the corporation] . . . [s]ince he is not the sole owner of the company, his partial stock ownership would not permit a per se piercing of the corporate veil." *Hilltop Realty*, 629 F.Supp. at 1304. The court noted that the owner's status "as president and chief operating officer in and

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Similarly, in *United States v. Lorantffy Care Center*, 999 F.Supp. 1037, 1045 (N.D. Ohio 1998), the government was seeking to hold employees personally liable for the pattern and practice of discrimination allegedly perpetrated by a care center for the elderly. The court noted that there is a right to challenge the "illegal activities of a group of persons even if the individual members" were not engaged in any illegal activity. *See id.* "However, that right is limited. In particular, no individual may be held vicariously liable simply because she is an officer or manager of the company." *Id.*

Thus, where the license is held by a corporation, the liability attaches to the corporation and not to the officers of the corporation who did not engage in discriminatory conduct. Therefore, the sole issue in this summary judgment motion is whether Meyer, holds his broker's license as an individual or as an officer of Triad, Inc.

In opposing defendant's motion for summary judgment, plaintiffs seem to pay little attention to the Court's framing of the issue concerning the status of Meyer's license. Rather, plaintiff's focus on attempting to argue that the Court misread the law regarding personal liability of principals for the unlawful acts of their agents under FHA.[2] Plaintiffs' arguments have already been addressed

of itself does not render him personally liable for acts of the corporation or its agents or employees" absent a personal participation in the prohibited conduct. *See id.*

[2] In his reply brief, defendant correctly points out that instead of addressing the issue pertinent to this summary judgment motion, plaintiffs have framed their arguments in a way that looks like a motion for reconsideration of the Court's order denying in part and granting in part Meyer's motion to dismiss. *See* Def's Reply at 2. Under Central District of California Local Rule 7.16, a motion for reconsideration is

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and rejected in this Court's previous order and need not be repeated here.

In California, both corporations and individuals have to be licensed to operate as real estate brokers. *See* Cal. Bus. & Prof. Code § 10006. If the licensee is a corporation, the license entitles one officer from the corporation to act as a real estate broker for the corporation and he must be designated as such on the license. *See* Cal. Bus. & Prof. Code § 10211. "Each officer of a corporation through whom it is licensed to act as a real estate broker is, while so employed under such license, a licensed real estate broker, but licensed only to act as such for and on behalf of the corporation as an officer." *See* Cal. Bus. & Prof. Code § 10159.

During the time relevant to this case, the real estate license was issued to Triad, Inc. with Meyer as the designated corporate officer of Triad, Inc. Crank was employed by and licensed as a salesperson for Triad, Inc. Therefore,

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only proper in the following circumstances: (1) if there is a material difference in fact or law from that presented to the Court before such decision that, in the exercise of reasonable diligence, could not have been known to the party moving for reconsideration at the time of such decision; or (2) if new material facts emerge or a change of law occurs after the time of such decision; or (3) if there is a manifest showing of a failure to consider material facts presented to the Court before such a decision. A motion for reconsideration shall not in any manner repeat any arguments that were presented in the original motion or opposition. *See Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 275 (C.D.Cal. 1998). A motion for reconsideration cannot be based on evidence that could reasonably have been discovered prior to the court's ruling. *See Hopkins v. Andaya*, 958 F.2d 881, 887 n.5 (9th Cir. 1992). As discussed in the main portion of the text, plaintiffs have presented no scenario under which this Court should reconsider its ruling in Meyer's motion to dismiss.

because Triad, Inc. was the licensed broker, Crank's contractual relationship was with Triad, Inc. and not with Meyer. *See Hilltop*, 629 F.Supp. at 1303. Thus, Crank's discriminatory acts are imputed to Triad, Inc. and not to Meyer as an individual. Hence Meyer cannot be held personally liable for Crank's alleged misconduct.

IV. CONCLUSION

For the foregoing reasons, defendant Meyer's motion for summary judgment is GRANTED.

DATE: July 26, 1999

/s/ Wm. Matthew Byrne, Jr.
Wm. Matthew Byrne, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EMMA MARY ELLEN HOLLEY, et. al., Plaintiffs, v. DAVID MEYER, individually and in his capacity as President and designated officer/broker of TRIAD, INC., dba TRIAD REALTORS, Defendant.	CV 98-7965-WMB JUDGMENT (Filed Jul. 26, 1999)

The Court having issued its Order in the above entitled action, IT IS HEREBY ORDERED that judgment be granted for David Meyer on all remaining claims in this action.

Each side to bear its own costs.

Date: July 26, 1999

/s/ Wm. Matthew Byrne
Wm. Matthew Byrne, Jr.
United States District Judge

United States Court of Appeals,
Ninth Circuit.

Emma Mary Ellen HOLLEY; David Holley; Michael Holley, a minor; Brooks Bauer, individually and on behalf of the general public, Plaintiffs-Appellants,

v.

Grove S. CRANK, Sr., individually, dba Triad Realtors; Triad Inc., individually, dba Triad Realtors Defendants,

and

David Meyer, individually and in his capacity as President and designated officer/broker of Triad, Inc., dba Triad Realtors, Defendant-Appellee.

No. 99-56611.

Argued and Submitted March 5, 2001
Filed July 31, 2001

Elizabeth N. Brancart, Brancart & Brancart, Pescadero, California, for the appellants.

Douglas G. Benedon, Benedon & Serlin, Woodland Hills, California, for the appellee.

Appeal from the United States District Court for the Central District of California; William Matthew Byrne, Jr., Senior District Judge, Presiding. D.C. Nos. CV-98-07965-WMB-HX, CV-97-08369-WMB-SHX.

Before: HUG, AND B. FLETCHER, CIRCUIT JUDGES, and ILLSTON, District Judge.*

* Honorable Susan Y. Illston, United States District Judge for the Northern District of California, sitting by designation.

HUG, Circuit Judge:

In this case we must decide whether owners and officers of corporations may be held vicariously liable for an employee's violations of the Fair Housing Act (FHA). We conclude that they can. Although under general principles of tort law corporate shareholders and officers usually are not held vicariously liable for an employee's action, the criteria for the Fair Housing Act is different as liability is specified for those who direct or control or have the right to direct or control the conduct of another with respect to the sale of or provision of brokerage services to the sale of a dwelling. The decision of the district court is reversed.

BACKGROUND

Emma Mary Ellen Holley is African American, her husband David Holley, is Caucasian and their son, Michael Holley is African American. The Holleys allege that in October 1996, they visited Triad Realty's office in Twenty-Nine Palms, California where they met with Triad agent Grove Crank and inquired about listings for new houses in the range of $100,000 to $150,000. The Holleys allege that Crank showed them four houses in the area, all above $150,000. In mid-November 1996, the Holleys located a home on their own that happened to be listed by Triad. In response to the Holleys' inquiry about the home, Triad agent Terry Stump informed them that the asking price for the house was $145,000. The Holleys expressed interest in purchasing the home and offered to pay the asking price and to put $5,000 in escrow for the builder to hold the house until April or May 1997 when they closed escrow on their existing home.

Stump told the Holleys that their offer seemed fair, as did the builder, Brooks Bauer, when Mrs. Holley called him with the same offer. Bauer did express, however, that the offer would have to go through Triad. Later, Stump called Mrs. Holley to tell her that more experienced agents in the office, one of whom was later identified as Grove Crank, felt that $5,000 was insufficient to get the builder to hold the house for six months. The Holleys decided not to raise their offer and Triad never presented the original offer to Bauer. One week later, Bauer inquired at Triad about the status of the Holleys' offer. Crank then allegedly used racial invectives in referring to the Holleys, telling Bauer that he did not want to deal with those "n" and called them a "salt and pepper team." The Holleys eventually hired a builder to construct a house for them and Bauer later sold his house for approximately $20,000 less than the Holleys had offered.

Bauer and the Holleys filed a complaint on November 14, 1997, alleging that Crank and Triad violated federal and state fair housing laws. They later filed a separate action against David Meyer as officer/broker, president and owner of Triad, covering the same allegations and adding several new claims. The district court consolidated the two cases. The district judge, ruling on a Federal Rule of Civil Procedure 12(b)(6) motion, dismissed all of the claims except the FHA claim, on the grounds that they were barred by the applicable statutes of limitation. Plaintiffs have not appealed this ruling. With regard to the FHA claim, the district court granted the motion to dismiss Meyer in his capacity as an officer of Triad stating that any liability of Meyer as an officer of Triad would attach to Triad in that Plaintiffs have not urged theories that would justify reaching Meyer individually. Meyer

than [sic] moved for summary judgment on the remaining FHA claim. The district court granted Meyer summary judgment on that claim, finding that, during the relevant time, the real estate license was issued to Triad, with Meyer as the designated corporate officer of Triad. Thus, the district court concluded that Crank's discriminatory acts could be imputed to Triad, but not to Meyer as an individual. The district court entered a Rule 54(b) certification of that judgment as final to allow this appeal, and stayed all remaining proceedings against Triad and Crank.

ANALYSIS

Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act of 1968 (FHA), broadly prohibits discrimination in housing. 42 U.S.C. § 3601 *et seq*. An examination of the Act reveals a "broad legislative plan to eliminate all traces of discrimination within the housing field." *Marr v. Rife*, 503 F.2d 735, 740 (6th Cir.1974). The FHA itself, however, does not limit or define who can be sued for discriminatory housing practices. The Department of Housing and Urban Development (HUD), the federal agency primarily assigned to implement and administer Title VIII, has developed regulations and guidelines, which this Court affords considerable deference, interpreting when liability attaches under the FHA. *See Harris v. Itzhaki*, 183 F.3d 1043, 1054 (9th Cir.1999). Historically, HUD's regulations for administrative complaints have provided, in relevant part:

> A complaint may also be filed against any person who directs or controls, *or has the right to direct or control, the conduct of another person* with respect to any aspect of the sale . . . of dwellings or the provision of brokerage services relating to the sale [ ] of dwellings if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

24 C.F.R. § 103.20 (1999)[1] (emphasis added).

The FHA provides two means of enforcing its provisions. Under § 3610(a), a person "aggrieved" may file a complaint with HUD, and the agency investigates and resolves the complaint's charges. If the administrative agency is unable to obtain compliance or concludes that judicial action is necessary to carry out the purposes of the Act, a civil suit may be commenced. 42 U.S.C. §§ 3610(e) & (g); 3612. The alternate route for obtaining redress under the FHA is pursuant to § 3613, which provides the right to file suit in a federal or state court without awaiting action by HUD. Thus, the two sections provide parallel remedies for the same prospective plaintiffs and courts have analyzed the provisions as alternate analogous remedies. *See Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 105-8, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979) (noting HUD's consistent treatment of the two provisions as alternative remedies to precisely the same prospective plaintiffs); *see also Marr v. Rife*, 503 F.2d at 739 (concluding that

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[1] The current version of this regulation replaces this language with an apparently more user-friendly provision instructing that a person should notify HUD for assistance in filing a claim if they believe there has been discrimination against them in any activity related to housing because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household. 24 C.F.R. § 103.10-20. Absent any indication that HUD intended to narrow liability under the new regulations, we find the previous language instructive regarding the potential scope of liability.

although the civil action provision fails to indicate the burden of proof to be applied, it would be anomalous for a different burden to apply under that section than is applied under § 3610). Accordingly, we look to HUD's relevant regulatory history for administrative complaints to help determine the scope of liability here.

The district court found that as a matter of law Meyer could not be vicariously liable based on his position as president and officer/broker of Triad. We disagree. Considering the relevant HUD regulation quoted above, Meyer bears potential liability in his capacity as owner, president and officer/broker of the corporation. Additionally, our Court has recognized that the duty to obey the laws relating to racial discrimination under the FHA is non-delegable. *Phiffer v. Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548, 552 (9th Cir.1980). Although officers and shareholders of a corporation generally enjoy immunity from liability for corporate acts, as a matter of furthering the compelling policy of the FHA and because this involves a non delegable duty, we conclude that a corporation and its officers may be held liable for their failure to ensure the corporation's compliance with the FHA, whether or not the officers directed or authorized the particular discriminatory acts that occurred.[2] While we recognize that holding a corporation and its officers responsible even though the acts of subordinate employees were neither directed nor authorized seems harsh punishment of an otherwise innocent employer, we agree with our sister Circuits in finding that preferable to leaving the burden on the

[2] Our decision applies only to vicarious liability for compensatory damages. We do not address vicarious liability for punitive damages as the issue is not before us.

innocent victim who felt the direct harm of the discrimination. *See City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1096-97 (7th Cir.1992); *Walker v. Crigler*, 976 F.2d 900, 904-905 (4th Cir.1992). The overriding societal priority of the FHA indicates that the owner has the power to control the acts of the agent and so must act to compensate the injured party and to ensure that similar harm will not occur again. When one of two innocent people must suffer, the one whose acts permitted the wrong to occur is the one to bear the burden. *See Walker*, 976 F.2d at 904.

Meyer's Liability as Sole Owner and Officer of Triad

The district court did not expressly address Meyer's liability as sole owner of Triad and Meyer maintains that Appellants did not sue Meyer as Triad's owner. The complaint against Meyer sued him for FHA violations in his individual capacity *and* as an officer and designated officer/broker of Triad. It does not appear that Meyer could be liable as an individual, as opposed to in his capacity as officer/broker and president of Triad, other than under a theory of vicarious liability as the owner of Triad, as there is no allegation that he directly participated in the discrimination. Accordingly, we address his potential liability as sole owner of Triad for FHA violations of employees.

The duty to obey the laws relating to racial discrimination under the FHA is non-delegable. *Phiffer*, 648 F.2d at 552. In *Phiffer*, this court concluded that the owner of the Proud Parrot Motor Hotel Corporation was liable for the discriminatory conduct of his desk clerk even absent

any evidence that the clerk acted under management's instruction. *Id.*[3] Although *Phiffer* involved an owner of a motel rather than a real estate corporation, the same rule is compelling here. Triad was directly and immediately involved in the sale of real estate involving the alleged violation. As the real estate agency that allegedly committed the unlawfully discriminatory acts in providing brokerage services for the sale of the property, Triad is connected to the discrimination even more directly than the hotel corporation owner in *Phiffer*. Our rule under *Phiffer* renders the sole owner of a corporation liable based on the non-delegable duty to obey the FHA and, thus, if Meyer owned Triad at the time of the discriminatory acts at issue, he cannot relinquish the responsibility for preventing such discrimination to another party. *Accord Walker v. Crigler*, 976 F.2d 900, 904 (4th Cir.1992).

In so ruling, we follow the lead of other federal circuit courts. The Seventh Circuit held a realty corporation and its sole shareholder vicariously liable for compensatory damages resulting from individual sales agents' FHA violations even though the sole shareholder had specifically instructed the agents not to discriminate and had not personally joined in any discriminatory acts. *Matchmaker*, 982 F.2d at 1096-98. Noting *Walker*'s policy discussion, the Seventh Circuit agreed with the Fourth Circuit that "'we must hold those who benefit from the sale and rental of property to the public to the specific mandates of anti-discrimination law if the goal of equal housing opportunity

[3] The court did note that the magistrate had found that the desk clerk's actions reflected established policy of the Proud Parrot. Still, the court's language regarding the non-delegable duty to follow the law is clear and instructive.

is to be reached.'" *Id.* at 1096 (quoting *Walker*, 976 F.2d at 905). We also agree with this policy.

Matchmaker concluded that as the sole owner of the corporation, the chief executive officer and the supervisor of the day-to-day operations of the corporation and its agents, the defendant should be personally liable for compensatory damages. *Id.* at 1098. We adopt this reasoning and, thus, remand to the district court to allow the Holleys the opportunity to try the issue of Meyer's ownership of Triad at the time of the alleged violations.[4] We

[4] Meyer started Triad in 1974 and was the sole stockholder from 1978 until around February 1995 when he claims he transferred ownership to Crank. Meyer concedes, however, that there is no documentation reflecting this transfer and that he remained the president and designated officer/broker of the company until 1998. When asked about the circumstances of the transfer of ownership, Meyer described having conversations with Crank in which they decided Crank would carry on with the company, take over financial responsibility and day-to-day operations. The only "evidence" that this transfer of ownership occurred in 1995 is "Document 2000" – the minutes of a meeting in April 1995 making Crank vice-president. Meyer claims that this assignment was associated with the transfer of ownership, despite Meyer remaining president of the company until 1998, and keeping an office there that he used daily until 1997.

The Holleys presented sufficient evidence to entitle them to a trial regarding Meyer's liability as owner of Triad at the time of the alleged discrimination. Appellants also allege that Triad pays its taxes under Meyer's identification number. Furthermore, Meyer executed Crank's renewal of salesperson's license in March 1998 indicating Meyer was the employing broker. At the very least under these circumstances, the alleged undocumented transfer of the corporation is questionable as there would seem to be legal, financial and tax consequences to such a transfer yet there is no explanation or documentation as to how anything was carried out. As such, the issue is one of credibility and fact. Accordingly, we remand to the district court to determine whether Meyer owned Triad during the time at issue and is therefore liable for the agent's discriminatory acts.

agree with the Seventh Circuit that a principal cannot free itself of liability by delegating to an agent the duty not to discriminate. *See id.* at 1096.[5]

While the evidence does not indicate that Crank acted with the approval or at the direction of Meyer, such a finding is not necessary to hold Meyer liable as the sole owner of Triad for breach of a non-delegable duty to comply with the FHA. *See Marr v. Rife*, 503 F.2d at 742. If Meyer solely owned the agency, he had at least the authority to control the acts of his salespersons, particularly in light of his position as president and officer/broker of Triad. As discussed above, this is enough, under the approach we adopt here and that adopted by a number of courts, to hold Meyer personally liable. *Id.*; *Matchmaker*, 982 F.2d 1086; *Walker*, 976 F.2d 900; *Northside Realty Assoc. Inc. v. United States*, 605 F.2d 1348, 1354 (5th Cir.1979); *United States v. Tropic Seas, Inc.*, 887 F.Supp. 1347, 1365 (D.Haw.1995); *United States v. Youritan Constr. Co.*, 370 F.Supp. 643, 649 (N.D.Cal.1973), modified as to relief and aff'd, 509 F.2d 623 (9th Cir.1975).

The same reasoning compels Meyer's potential liability in his capacity as president of the corporation. Perhaps more so than in his capacity as sole owner of the company, as an officer of the company he actually did direct or control, or had the right to direct or control, the conduct of

[5] The Sixth Circuit also held that a real estate agency owner should be vicariously liable for compensatory damages resulting from salespersons' FHA violations even though there was no evidence that the agent acted with the approval or at the direction of the owner. The court reasoned that the owner of the agency had at least the power to control the acts of his salespersons. *Marr v. Rife*, 503 F.2d 735, 742 (6th Cir.1974).

the salespersons who allegedly discriminated against the Holleys with respect to the sale of real estate. While we recognize that corporate officers and shareholders are generally shielded from personal liability, we agree with the Seventh Circuit that "where common ownership and management exists, corporate formalities must not be rigidly adhered to when inquiry is made of civil rights violations." *Matchmaker*, 982 F.2d at 1098. Thus, under relevant HUD regulatory history, and because the duty not to discriminate is a non-delegable one, we join other courts in holding that officers can be individually liable for discriminatory acts of corporate employees under their management and control. *See e.g., Tropic Seas*, 887 F.Supp. at 1365; *Northside*, 605 F.2d at 1354 (holding president and vice-president of real estate corporation accountable for discriminatory acts of their agents, "whether or not the officers directed or authorized the particular discriminatory acts that occurred").

Our decision recognizes the duty under the FHA as non-delegable, furthering the purposes of the FHA. Moreover, as discussed below, Meyer may have neglected his duties to supervise salespeople in their real estate transactions, which included his responsibility to ensure that they follow federal and state anti-discrimination laws.

Meyer's Responsibilities as Designated Officer/Broker of Triad

As designated officer/broker of the company, Meyer was responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees in the performance of acts for which a real estate license is required. Cal. Bus. & Prof.Code § 10159.2(a). Under California law, a real estate

broker is required to exercise reasonable supervision over the activities of his or her salespersons, including familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination. 10 Cal.Code Reg. § 2725(f). His failure to do so also bolsters the contention that he should be held personally liable for unlawful discriminatory acts of Triad's salespersons.

Although federal law governs the issue of agency under the FHA, the California licensing scheme is instructive here in discerning Meyer's supervision and control over Triad sales activity. California law provides that "[n]o acts for which a real estate license is required may be performed for, or in the name of, a corporation" unless the corporation has designated an officer of the corporation to serve as the officer/broker of the company. Cal. Bus. & Prof.Code §§ 10158 & 10211; 10 Cal.Code Reg. § 2740. As a real estate salesperson for Triad, acting under the corporate license, Crank sold real estate under the supervision of the designated officer/broker. Cal. Bus. & Prof.Code § 10159.2(a). Technically, the licensed broker is the corporation, however, as designated broker, under California law, Meyer was personally responsible for this supervision.

The district court interpreted this to mean that Meyer could be personally liable only if Crank operated under a license that Meyer held in his personal capacity rather than as an officer of Triad. Based on the analysis and policy discussed above and the California real estate licensing requirements, we disagree. The designated officer/broker of a real estate corporation in California is responsible for the "supervision and control of the activities conducted on behalf of the corporation by its officers and employees . . . including the supervision of salespersons licensed to the corporation in the performance of acts

for which a real estate license is required." Cal. Bus. & Prof.Code § 10159.2(a).

The state regulations implementing these real estate licensing laws require that a broker exercise "reasonable supervision" over the activities of salespersons. The regulations define such reasonable supervision as including establishment of "policies, rules, procedures and systems to review, oversee, inspect and manage" transactions requiring a real estate license and familiarizing salespersons with the requirements of federal and state laws prohibiting discrimination. 10 Cal.Code Reg. § 2725. Meyer does not dispute that he was the designated officer/broker of Triad at the time of the alleged discrimination. Meyer testified that he understood his responsibilities as designated officer/broker at Triad to include making sure that Triad's agents "were acting lawfully, that contracts were negotiated lawfully" and that people were treated lawfully.

Meyer's undisputed responsibility to supervise Triad's salespersons in real estate transactions places him squarely within HUD's regulatory history allowing complaints against any person who has the right to direct or control the conduct of another in any aspect of the sale of or provision of brokerage services to the sale of a dwelling. *See* 24 C.F.R. § 103.20 (1999). Meyer argues that this regulation is irrelevant here as it applies to administrative complaints rather than civil actions. The Supreme Court, however, has interpreted the statute authorizing an administrative proceeding and that authorizing the filing of a civil action as providing parallel remedies to the same prospective plaintiffs. *Gladstone*, 441 U.S. at 105-08, 99 S.Ct. 1601. The Court inferred the congressional intent to provide all victims of Title VIII violations two alternative

mechanisms to "seek redress: immediate suit in federal district court or a simple, inexpensive, informal conciliation procedure, to be followed by litigation should conciliation efforts fail." *Id.* at 104, 99 S.Ct. 1601. This judicial interpretation of the two statutes renders the regulation for administrative complaints highly relevant to the instant civil action.

Although the federal courts have declined to allow state law to control rulings on agency for purposes of FHA violations, consideration of the state licensing scheme is appropriate here to determine Meyer's involvement or omissions in the alleged discriminatory acts.[6] As both president and designated officer/broker of Triad, Meyer had a duty to prevent unlawful discrimination such as that which is alleged of Triad salesperson Crank. If Meyer breached that duty to supervise then he should be held accountable for such an omission even absent direct involvement or authorization of Crank's alleged discriminatory conduct.

We disagree with the district court's ruling that Meyer could only be liable here if Crank acted under the authority of a license Meyer held personally rather than as a corporate officer of Triad. His responsibilities as designated officer/broker under Triad's corporate license, by mandate of state law, required him to direct and control

[6] Meyer argues that the California real estate licensing law is irrelevant here as California courts have interpreted it as extending a disciplinary scheme rather than creating a private right of action against a designated broker. Appellants here do not attempt to bring a private action under the California statute, rather they argue that the statute is relevant to determining Meyer's responsibilities of supervision in a claim brought under the FHA.

the conduct of Triad salespersons with respect to the sale of homes and the provision of brokerage services relating to the sale of homes. If Meyer was indeed an officer of the corporation and the designated officer/broker of Triad Realty at the time of the alleged conduct, it is difficult to see how he could be excused from the obligation imposed by the FHA to prohibit discrimination in the housing field.

CONCLUSION

In light of the evidence that Meyer was (1) an officer of Triad Realty at the time of the alleged discriminatory acts; (2) the designated broker of the corporation who enabled it to engage in the business of selling real estate; and (3) the sole shareholder of the corporation at the time of the alleged discrimination, we disagree with the district court's conclusion that as a matter of law Meyer cannot be individually liable for damages resulting from the alleged FHA violations. Accordingly, we reverse and remand this case to the District Court for further proceedings consistent with this opinion.

REVERSED and REMANDED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMMA MARY ELLEN HOLLEY; DAVID HOLLEY; MICHAEL HOLLEY, a minor; BROOKS BAUER, individually and on behalf of the general public, Plaintiffs-Appellants, v. GROVE S. CRANK, SR., individually, dba Triad Realtors; TRIAD INC., individually, dba Triad Realtors Defendants and DAVID MEYER, individually and in his capacity as President and designated officer/broker of Triad, Inc., dba Triad Realtors, Defendant-Appellee.	No. 99-56611 D.C. No. CV-98-07965-WMB-SHX; CV-97-08368-WMB-SHX ORDER (Filed Sept. 19, 2001)

Before: HUG, and B. FLETCHER, Circuit Judges, and ILLSTON, District Judge.*

The panel has voted to deny Appellee's petition for rehearing. Judge Hug has voted to deny the suggestion for

* Honorable Susan Y. Illston, United States District Judge for the Northern District of California, sitting by designation.

rehearing en banc, and Judges Fletcher and Illston so recommend.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35(b).

The petition for rehearing and suggestion for rehearing en banc are denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMMA MARY ELLEN HOLLEY; DAVID HOLLEY; MICHAEL HOLLEY, a minor; BROOKS BAUER, individually and on behalf of the general public, Plaintiffs-Appellants, v. GROVE S. CRANK, SR., individually, dba Triad Realtors; TRIAD INC., individually, dba Triad Realtors Defendants and DAVID MEYER, individually and in his capacity as President and designated officer/broker of Triad, Inc., dba Triad Realtors, Defendant-Appellee.	No. 99-56611 D.C. No. CV-98-07965-WMB-SHX; CV-97-08368-WMB-SHX ORDER (Filed Oct. 4, 2001)

Before: HUG, Circuit Judge.

Appellee's motion for stay of the issuance of the mandate pending application for writ of certiorari is GRANTED. Fed. R. App. P. 41(d). The mandate is stayed for ninety (90) days from the date this order is filed. If, within that period, the Clerk of the Supreme Court advises the Clerk of this Court that a petition for certiorari has been filed, then the mandate shall be further stayed until final disposition of the matter by the Supreme Court.